

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

310 CMR 50.00: TOXICS USE REDUCTION

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50.10: Definitions

As used in 310 CMR 50.00, the following terms shall have the following meanings, unless the context otherwise clearly requires.

Agency means state agency.

Appellant means an individual or organization who requests an adjudicatory hearing pursuant to M.G.L. c. 21I and 310 CMR 50.00.

Applicant means an individual who submits an application for certification as a toxics use reduction planner in accordance with 310 CMR 50.50.

Article means a manufactured item, other than an item which is manufactured at the facility:

- (a) which is formed to a specific shape or design during manufacture;
- (b) which has end use functions dependent in whole or in part upon its shape or design during end use; and
- (c) which does not release a toxic substance under normal conditions of processing or use of that item at the facility or establishments.

Board means the Science Advisory Board of the Toxics Use Reduction Institute at the University of Massachusetts Lowell.

Byproduct means ~~all~~ nonproduct outputs of toxic or hazardous substances generated by a production unit, ~~prior to~~ before handling, transfer, treatment or release. “Otherwise used” substances shall be counted as byproduct when they leave a production unit.

CERCLA means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* (Public Law 92-500).

Commissioner means the Commissioner of the Department of Environmental Protection (pursuant to St. 1989, c. 240, § 101, "... the Department of Environmental Quality Engineering shall be known as the Department of Environmental Protection") or his designee.

Council means the ~~A~~administrative ~~C~~ouncil on ~~T~~toxics ~~U~~se ~~R~~eduction as established by M.G.L. c. 21I, § 4.

Covered toxic means:

- (a) a toxic substance that is manufactured, processed, or otherwise used at a facility in amounts, determined in accordance with 310 CMR 50.20, equal to or greater than the applicable threshold amount. ~~;~~ ~~and~~
- ~~(b) If a facility manufactures, processes, or otherwise uses a toxic substance in amounts, determined in accordance with 310 CMR 50.20,~~

~~equal to or greater than the applicable threshold amount, then a "covered toxic" also means a toxic substance that is manufactured or processed at the facility in amounts, determined in accordance with 310 CMR 50.20, equal to or greater than 10,000 pounds per calendar year, if the applicable threshold amount for that toxic substance is greater than 10,000 pounds per calendar year.~~

(eb) A "covered toxic" also means a toxic substance manufactured, processed, or otherwise used by a toxic user within a priority user segment designated pursuant to M.G.L. c. 21I, § 14 for which the Department requires reporting or planning pursuant to M.G.L. c. 21I, §§ 14 and 10 or 11.

Customs territory of the United States means the 50 States, the District of Columbia, and Puerto Rico.

Department means the Department of Environmental Protection (pursuant to St. 1989, c. 240, § 101, "... the Department of Environmental Quality Engineering shall be known as the Department of Environmental Protection").

Emission means a release of a toxic or hazardous substance to the environment or a transfer of a toxic or hazardous substance in waste to an off-site location.

Environmental management system means a quality-based management system that effectively integrates environmental considerations into an organization's day-to-day operations and management culture. In order to be eligible to be an alternative to toxic use reduction planning, the environmental management system shall, at a minimum, meet the following criteria: (a) include all production units that use TURA-listed chemicals used in reportable quantities as part of the environmental management system; (b) identify all TURA-listed chemicals used in reportable quantities as significant aspects; (c) consider toxics use reduction when identifying significant aspects and developing associated objectives and targets; (d) emphasize source reduction in achieving objectives; and (e) incorporate appropriate environmental performance metrics when developing objectives and targets.

EPCRA means the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11001 *et seq.* (Public Law 99-499).

Establishment means an economic unit, generally at a single physical location, where business is conducted or where services or industrial operations are performed.

Facility means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person, or by any person who controls, is controlled by, or is under common control with, such person. A facility may

consist of more than one establishment if the establishments are operated by persons who have a common corporate or business interest (including, without limitation, common ownership or control) in the establishments. If the facility consists of more than one establishment where the establishments are operated by persons who do not have a common corporate or business interest (including, without limitation, common ownership or control) in the establishments, then each such person shall treat the establishments it operates as a facility. For purposes of this definition, a "common corporate or business interest" includes ownership, partnership, joint ventures, ownership of a controlling interest in one person by the other, or ownership of a controlling interest in both persons by a third person.

Form A means the report authorized by 40 CFR, part 372.27 and containing the data elements specified in 40 CFR, part 372.95.

Form R means the report required by Section 313 of EPCRA and 40 CFR part 372.

Form S means the form required by M.G.L. c. 21I and 310 CMR 50.30, ~~and set forth in 310 CMR 50.32 (10).~~

Full-time Individual Employed or Full-time Equivalent means each 2,000 hours worked per year by an employee or combination of employees.

Full-time Employee means each 2,000 hours worked per year by an employee or combination of employees.

Full-time Work Experience means experience during full-time employment which extends over an uninterrupted period of three months or more with a minimum of 37.5 hours per week.

General Practice Toxics Use Reduction Planner means an individual who has ~~a valid been~~ certificated issued by the Department pursuant to 310 CMR 50.54 ~~and has paid the fee specified in 310 CMR 50.53(3)(a) to certify toxics use reduction plans for any toxics user.~~

Higher hazard substance means a substance designated by the Council as a higher hazard substance pursuant to M.G.L. c.21I, § 9 and 301 CMR 41.00.

Import means to cause a toxic substance (including a mixture containing a toxic substance) to be imported into the customs territory of the United States. For purposes of this definition, "to cause" means to intend that the toxic substance be imported and to control the identity of the imported toxic substance and the amount to be imported. For purposes of this definition, "to cause" includes, without imitation, (i) situations where a person orders a toxic substance from a

foreign supplier, and (ii) situations where the person uses an import brokerage firm as an agent to obtain the toxic substance.

Institute means the Toxics Use Reduction Institute at the University of Massachusetts Lowell.

Intermediate Product means (a) in chemical manufacturing, any chemical substance that is consumed, in whole or in part, in chemical reactions used for the intentional manufacture of another chemical substance or mixture, or that is intentionally present for the purpose of altering the rate of chemical reactions, other than a non-isolated intermediate as defined in M.G.L. c. 21I; (b) in any other setting, any manufactured substance, compound, or product that is consumed, in whole or in part, in a chemical or physical process for the intentional manufacture of another product, or that is intentionally present for the purpose of aiding the manufacture of another product, other than a non-isolated intermediate as defined in M.G.L. c. 21I and 310 CMR 50.00.

Large Quantity Toxics User means any toxics user who manufactures, processes or otherwise uses any toxic or hazardous substance in an amount, determined in accordance with 310 CMR 50.20, the same as or greater than the applicable threshold amount in a calendar year at a facility. When more than one threshold applies to a facility's manufacturing, processing, or other use of a toxic substance, the toxics user is a large quantity toxics user if the facility exceeds any applicable threshold.

Limited Practice Toxics Use Reduction Planner means an individual who has ~~been a valid~~ certification issued by the Department pursuant to 310 CMR 50.54 or 50.55 ~~and has paid the fee specified in 310 CMR 50.53(3)(e) to certify toxics use reduction plans for facilities owned or operated by his or her employer.~~

Lower hazard substance means a substance designated by the Council as a lower hazard substance pursuant to M.G.L. c.21I, § 9 and 301 CMR 41.00.

Manufacture means to produce, prepare, import or compound a toxic or hazardous substance. Manufacture shall also mean to produce a toxic or hazardous substance coincidentally during the manufacture, processing, use or disposal of another ~~chemical~~ substance or mixture of substances ~~chemicals~~, including a toxic substance that is separated from that such other substance or mixture of substances as a byproduct, and a toxic substance that remains in ~~a chemical or mixture of chemicals~~ that such other substance or mixture of substances as an impurity .

Mixture means any combination of two or more chemicals, if the combination is not, in whole or in part, the result of a chemical reaction. However, if the combination was produced by a chemical reaction but could have been produced

without a chemical reaction, it is also treated as a mixture. A mixture also includes any combination which consists of a chemical and associated impurities.

Multi-media means having to do with all environmental media including, but not limited to, water, land and air and workplaces within facilities.

NAICS means the North American Industry Classification System developed under the auspices of the United States Office of Management and Budget.

Non-isolated intermediate means any intermediate which is not intentionally removed from the equipment in which it is manufactured, including any reaction vessel in which it is manufactured, equipment which is ancillary to the reaction vessel or similar equipment, and any equipment through which the intermediate passes during a continuous flow process, but not including tanks or other vessels or equipment in which the substance or product is stored after manufacture.

Office means Office of Technical Assistance and Technology within the Executive Office of Environmental Affairs.

Otherwise use or other use means any use of a toxic substance that is not covered by the terms "manufacture" or "process" and includes use of a toxic substance contained in a mixture or trade name product. Relabeling or redistributing a container of a toxic substance where no repackaging of the toxic substance occurs does not constitute use or processing of the toxic substance.

Person means any individual, trust, firm, joint stock company, corporation, partnership, or association engaged in business or in providing service, excluding the Commonwealth of Massachusetts, and any authority, district, municipality or political subdivision of the Commonwealth of Massachusetts.

Plan summary or Summary means the plan summary that a toxics user is required to submit to the Department pursuant to M.G.L. c. 21I, § 11(F) and 310 CMR 50.40.

Plan update or Update means an updated toxics use reduction plan pursuant to M.G.L. c. 21I, § 11(D) and 310 CMR 50.40.

POTW; (publicly-owned treatment works) operators means holders of discharge permits for any devices and systems owned by the Commonwealth or any of its political subdivisions and used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature to implement 33 U.S.C. § 1281, or necessary to recycle or reuse water at the most economical cost under the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and the appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled

supply such as standby treatment units and clear well facilities; any works, including the land that will be an integral part of the treatment process (including the land used for the storage of treated wastewater in land treatment systems prior to land application) or is used for ultimate disposal of residues resulting from such treatment; any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems.

Process means the preparation of a toxic or hazardous substance, including, without limitation, a toxic substance contained in a mixture or trade name product, after its manufacture, for distribution in commerce:

- (a) in the same form or physical state, or in a different form or physical state from, that in which it was received by the toxics user so preparing such substance; or
- (b) as part of an article containing the toxic or hazardous substance.

Product means a product, a family of products, an intermediate product, a family of intermediate products, or a desired result or a family of results. "Product" also means a byproduct that is used as a raw material without treatment. If a byproduct is treated before it is used as a raw material, then it is not a product.

Production unit means a process, line, method, activity, or technique, or a combination or series thereof, used to produce a product.

Resource Conservation means an action that decreases the use or consumption of a natural asset such as water, energy, or raw materials, or increases the efficiency of the use of the asset, without increasing the risk to the public, including workers and consumers, or the environment and without increasing the amount of waste generated.

Senior management official means an official who has management responsibility for the person or persons completing the report or plan, and who has authority to act as an agent for the toxics user.

SIC code or standard industrial classification code means a specific identification code, within the identification code system developed by the United States Chamber of Commerce, assigned to a facility.

Small quantity toxics user means any toxics user who is not a large quantity toxics user.

State agency means any agency or authority of the Commonwealth as defined in M.G.L. c. 30A, § 1.

Thresholds amounts or threshold amount mean the following:

- (a) for those toxics users that manufacture or process a toxic or hazardous substance, as the terms "manufacture" and "process" are defined herein, the threshold amount for a toxic or hazardous substance shall be 25,000 pounds each year at any one facility, except the threshold will be 1,000 pounds each year at any one facility for a higher hazard substance; and
- (b) for those toxics users that otherwise use a toxic or hazardous substance, the threshold amount for a toxic or hazardous substance shall be 10,000 pounds each year at any one facility, except the threshold will be 1,000 pounds each year at any one facility for a higher hazard substance.
- (c) if the administrator of the United States Environmental Protection Agency sets a threshold quantity for facility reporting on a toxic or hazardous substance under Section 313 of EPCRA which is lower than a corresponding threshold amount specified in paragraphs (a) or (b), then the corresponding threshold for that substance pursuant to M.G.L. c. 21I and 310 CMR 50.00 shall be the same as the federal threshold.
- (d) if the Ceouncil sets a threshold amount in 301 CMR 41.00 for a higher hazard substance below that which is specified in paragraphs (a) and (b), that lower threshold shall apply for that higher hazard substance.

Toxics user means the following:

- (a) ~~any a~~ person who owns or operates ~~any~~ facility that manufactures, processes or otherwise uses any toxic or hazardous substance ~~and~~ that is classified in SIC Codes 10 through 14, inclusive, 20 through 40, inclusive, 44 through 51, inclusive, 72, 73, 75 ~~and/or~~ 76, or the corresponding NAICS codes.
- (b) If a person owns a facility, and that person's only interest in the facility is ownership of the real estate upon which the facility is operated, then, with respect to that facility, that person is not a toxics user. This includes, without limitation, owners of facilities such as industrial parks, all or part of which are leased to persons who operate establishments within SIC codes 10 through 14, inclusive, 20 through 40, inclusive, 44 through 51, inclusive, 72, 73, 75 ~~and/or~~ 76, or the corresponding NAICS codes, - where the owner has no other business interest in the operation of the facility or establishment.

Toxic means toxic or hazardous.

Toxic or hazardous substance means ~~any chemical~~ a substance in a gaseous, liquid, ~~or~~ solid ~~state or other form~~ which is identified on the toxic or hazardous substance list established pursuant to M.G.L. c. 21I, § 9 and 301 CMR 41.00, but which will not include any ~~chemical~~ substance when it is:

- (a) present in an article;
- (b) used as a structural component of a facility;

- (c) present in a product used for routine janitorial or facility grounds maintenance;
- (d) present in foods, drugs, cosmetics or other personal items used by employees or other toxics users at a facility;
- (e) present in a product used for the purpose of maintaining motor vehicles operated by a facility;
- (f) present in process water or non-contact cooling water as drawn from the environment or from municipal sources, or present in air used either as compressed air or as part of combustion;
- (g) present in a pesticide or herbicide when used in agricultural applications; or
- (h) present in crude, ~~lubelubricating~~ or fuel oils or other petroleum materials being held for direct wholesale or retail sale; or
(i) present in crude or fuel oils used in combustion to produce electricity, steam or heat except when production of electricity, steam or heat is the primary business of a facility.

Toxic or hazardous substance list means the list of toxic or hazardous substances in 301 CMR 41.00 and established pursuant to M.G.L. c. 21I, § 9.

Toxics means toxic or hazardous substances.

Toxics use fee means ~~that~~^{the} fee in 301 CMR 40.00 established under, and assessed pursuant to, M.G.L. c. 21I, § 19.

Toxics use reduction means in-plant changes in production processes or raw material that reduce, avoid, or eliminate the use of toxic or hazardous substances or generation of hazardous byproducts per unit of product, so as to reduce risks to the health of workers, consumers, or the environment, without shifting risks between workers, consumers, or parts of the environment. Toxics use reduction shall be achieved through any of the following techniques:

- (a) Input substitution, which refers to replacing a toxic or hazardous substance or raw material used in a production unit with a non-toxic or less toxic substance;
- (b) Product reformulation, which refers to substituting for an existing end-product an end product which is non-toxic or less toxic upon use, release or disposal;
- (c) Production unit redesign or modification, which refers to developing and using production units of a different design than those currently used;
- (d) Production unit modernization, which refers to upgrading or replacing existing production unit equipment and methods with other equipment and methods, based on the same production unit;
- (e) Improved operation and maintenance of production unit equipment and methods, which refers to modifying or adding to existing equipment or methods including, but not limited to, such techniques as improved housekeeping practices, system adjustments, product and process

inspections, or production unit control equipment or methods; or
(f) Recycling, reuse, or extended use of toxics by using equipment or methods which become an integral part of the production unit of concern, including but not limited to filtration and other closed loop methods. However, toxics use reduction shall not include or in any way be inferred to promote or require incineration, transfer from one medium of release or discharge to other media, off-site or out-of-production unit waste recycling, or methods of and-of-pipe treatment of toxics as waste.

Toxics use reduction institute or Institute mean the Toxics Use Reduction Institute established pursuant to M.G.L. c. 21I, § 6.

Toxics use reduction plan or Plan means the plan that a toxics user is required to develop in accordance with M.G.L. c. 21I, § 11 and 310 CMR 50.40.

Toxics use reduction planner or planner means an individual certified by the Department in accordance with 310 CMR 50.50.

Toxics use report means the report that a toxics user is required to submit to the Department pursuant to M.G.L. c. 21I, § 10 and 310 CMR 50.30.

Toxics use reduction planning program means an educational program in toxics use reduction developed by the Institute in accordance with M.G.L. c. 21I, § 6(E).

Trade secret means any formula, plan, pattern, process, production data, device, information, or compilation of information which is used in a toxics user's business, and which gives said toxics user an opportunity to obtain an advantage over competitors who do not know or use it.

TURA means the toxics use reduction act, M.G.L. c. 21I.

Uniform certification examination, examination or exam means an examination prepared by the Department pursuant to M.G.L. c. 21I, s. 12.

Unit of product means a measure that reflects the level of production or activity associated with the use of the toxic or the generation of the toxic as byproduct.

User Segment means a set of no fewer than five toxics users who employ a similar production unit, classified by the department pursuant to 310 CMR 50.70. Production units grouped into a user segment must contain similar products and processes.

50.32: Reporting Requirements

- (1) On or before July 1 of each year, toxics users shall submit a toxics use report including information associated with each covered toxic manufactured, processed, or otherwise used at a facility in accordance with 310 CMR 50.00.
- (2) For facilities that consist of more than one establishment, and that manufacture, process, or otherwise use a covered toxic, the toxics user may submit a separate report for each establishment or for each group of establishments, provided that information associated with the manufacturing, processing, or other use of that covered toxic at all the establishments within the facility is reported in accordance with 310 CMR 50.00, including, without limitation, 310 CMR 50.20 and 310 CMR 50.30. If each establishment or group of establishments files separate reports then for all other covered toxics at that facility they must also submit separate reports.
- (3) With respect to activities at a facility involving a covered toxic, when more than one threshold amount applies to the activities, the report shall include information associated with all activities involving that covered toxic at the facility. Such information shall be reported in accordance with 310 CMR 30.50, including, without limitation, 310 CMR 50.20 and 310 CMR 50.30.
- (4) With respect to metal compounds that are covered toxics, the toxics user need only include in the report information associated with the parent metal, and need not include in the report information associated with other components of the metal compound in the metal compound category.
- (5) A senior management official of the facility shall certify the accuracy and completeness of the report by signing a certification statement that accurately identifies the report. Falsification of information in the report, including the certification statement, shall be a violation of 310 CMR 50.00 for which the Department may take an enforcement action.
- (6) A toxics use report shall include information based on the quantity of each covered toxic manufactured, processed, or otherwise used at the facility during the calendar year preceding the date on which the toxics use report is due.
- (7) In calculating, measuring, or estimating quantities of a toxic or hazardous substance to be reported pursuant to 310 CMR 50.30, toxic users shall report with the maximum accuracy that is feasible and practicable. Toxics users shall report quantities with accuracy to two significant digits.
- (8) If a toxics user discovers, after submitting a report, that there is a gross error in any or all of the information contained in the report, the toxics user shall, in writing, so notify the Department within 14 days of the date of discovery. The toxics user shall submit corrections to the report within 30 days of such notification. Nothing in 310 CMR 50.32(8) shall preclude the Department from

taking any other ~~appropriate~~appropriate action, including, without limitation, an enforcement action.

(9) The Department may require the toxics user to amend or supplement any report submitted prior to the current reporting year if the toxics user changes any of the following:

~~(a) the base year;~~

~~(b) the unit of product used to calculate either the byproduct reduction index or the emissions reduction index;~~

~~(c) an estimating method used to determine information in the toxics use report if using the new method would significantly alter information in a previously submitted report. Nothing in 310 CMR 50.32(9) shall preclude the Department from taking any other appropriate action, including, without limitation, an enforcement action.~~

(10) Each toxics use report shall contain the information set forth in 310 CMR 50.33, and shall be submitted on forms prescribed by the Department.

(11) Each toxics use report shall consist of one completed Form R and one completed Form S for each covered toxic., provided, however, that a Form A may be submitted in lieu of a Form R if the requirements of 40 CFR Part 372.27 are met and the Form A includes a production ratio or activity index. A Form A may not be submitted in lieu of a Form R for a higher hazard substance.

(12)(a) With respect to the information required pursuant to 310 CMR 50.33(3) to be reported on the Form S, toxic users need not report information associated with the following entities.

1. pilot plants
2. pilot production units
3. start-up production units for a time period equal to the shorter of either the time period from the date of initial operation until required operational efficiency is achieved, or two years from the date of initial operation.

(b) With respect to all other information required pursuant to 310 CMR 50.33 to be reported on the Form S, toxics users shall include information associated with the entities set forth in 310 CMR 50.32(12)(a)1., 2. and 3.

~~(13) The unit of product used to calculate the byproduct reduction indices and emission reduction indices pursuant to 310 CMR 50.33(3)(d) and 310 CMR 50.33(e) shall be physical measure except as provided in 310 CMR 50.33(g).~~

50.33: Content of Report

Each toxics use report shall contain the following information:

(1) the information required to be submitted under regulations promulgated pursuant to section 313 of EPCRA;

(2) the quantities of the toxic or hazardous substance at the facility which are: manufactured; processed; otherwise used; generated as byproduct prior to any handling, transfer, treatment or release; and shipped as or in products from the facility; and,

(3) if the sum of the quantities of the toxic or hazardous substance which are manufactured, processed and otherwise used are not approximately equal to the sum of the quantities shipped in product and generated as byproduct, an explanation of why there is not an approximate materials balance.

(4) whether anything non-routine occurred at the facility that affected the data reported and an explanation of how it affected the data.

(5) whether the toxic or hazardous substance is used to treat waste or control pollution and, if so, the amounts used.

~~(36)~~ for each production unit at the facility in which the toxic or hazardous substance is manufactured, processed or otherwise used, each toxics use report shall also include the following information:

(a) the information necessary to identify the toxics user, the facility, the toxic or hazardous substance, and the production unit. The production unit shall be identified by providing a description of the process, the product, the unit of product, and the SIC code or corresponding NAICS code that best describes the product. ~~the information set forth in 310 CMR 50.32(10).~~

(b) ~~an indication of~~ whether the toxic or hazardous substance was used in the production unit in amounts:

1. greater than zero pounds ~~and but~~ less than or equal to 5,000 pounds;
2. greater than 5,000 pounds but less than or equal to 10,000 pounds; ~~or~~
3. greater than ~~ten thousand~~ 10,000 pounds; ~~but less than or equal to 100,000 pounds;~~
4. greater than 100,000 pounds, but less than or equal to 500,000 pounds; or
5. greater than 500,000 pounds.

(c) Amounts used in waste treatment shall not be included in determining the amount used in the production unit ~~but shall be reported separately in accordance with 310 CMR 50.32(10).~~

(d) whether the use of any toxic substance or the generation of byproduct increased or decreased by more than 10 percent compared to the previous reporting year and/or the toxics user implemented toxics use reduction, and, if so, identification of where in the process the change and/or toxics use reduction occurred and an explanation for the change and/or toxics use reduction, including any toxics use reduction techniques implemented.

- ~~(c) the reporting base year, which shall be the later of:~~
- ~~1. the first calendar year for which the toxics user was or is required to file any information regarding the toxic or hazardous substance pursuant to 310 CMR 50.00 or Section 313 EPCRA; or~~
 - ~~2. the first year for which the toxics user has full information necessary to document the information required to be reported pursuant to 310 CMR 50.32(10).~~
- ~~(d) a byproduct reduction index which shall be a number that is the result of the following equation: 100 times [(A less B) divided by A], where A represents the quantity of toxics generated as byproduct per unit of product produced in the reporting base year, and B represents the quantity of toxics generated as byproduct per unit of product produced in the current reporting year.~~
- ~~(e) an emissions reduction index which shall be a number that is the result of the following equation: 100 times [(A less B) divided by A], where A represents the quantity of emissions attributable to the production unit per unit of product produced in the reporting base year, and B represents the quantity of emissions attributable to the production unit per unit of product produced in the current reporting year.~~
- ~~(f) A matrix form on which the toxics user indicates the methods by which the increase in the byproduct reduction index was achieved for each production operation during the reporting year. On the horizontal axis of the matrix shall be listed the toxics use reduction techniques of: input substitution, product reformulation, production unit redesign, production unit modernization, improved operation and maintenance of production units, and recycling or reuse which is integral to the production unit. The horizontal axis shall also list the management technique of using byproduct as product, and shall contain a column labelled "miscellaneous". On the vertical axis of the matrix shall be listed: materials handling and storage, processing operations, and finished goods handling.~~
- ~~(g) a description of the unit of product used to calculate the byproduct reduction index and the emissions reduction index. A non-physical measure may be used if developing a physical measure is not feasible. If a non-physical measure is used, the report shall include an explanation of:~~
- ~~1. why a physical measure cannot be used; and~~
 - ~~2. how the non-physical measure has been adjusted to accurately reflect the level of production or activity associated with the use of the toxic or the generation of the toxic as a byproduct.~~

(47) Each report shall also indicate any of the following changes:

- (a) a change in a unit of product ~~used to calculate either the byproduct reduction index or the emissions reduction index;~~
- (b) a change in a reporting base year; or

(~~eb~~) a change in the estimating method used to determine information in the toxics use report if using the new method would significantly alter information in a previously submitted report; and
(~~dc~~) whether or not the production unit was included in the report due on the previous July 1.

50.34: ~~Billing Forms~~ Toxics Use Fee Worksheet

With each report ~~or reports~~ submitted pursuant to 310 CMR 50.32, the toxics user shall also submit to the Department a Toxics Use Fee Worksheet ~~and a TURA Billing Information Form~~, on forms prescribed by the Department.

50.35: ~~Deficient Toxics Use Reports~~(Reserved)

~~(1) The Department may review reports and any or all information or documentation supporting the information reported.~~

~~(2) If the Department determines that a deficiency in a report was unintentional, then the Department shall allow the toxics user 90 days from the date of written notice of the deficiency to correct the deficiency. Failure to correct the deficiency within 90 days from the date of the written notice of the deficiency, shall be a violation of 310 CMR 50.00 for which the Department may take an enforcement action.~~

~~(3) A deficiency in a report that the Department determines to be an intentional deficiency shall be a violation of 310 CMR 50.00 for which the Department may take an enforcement action.~~

50.36: Recordkeeping Requirements

(1) The toxics user shall establish and maintain at the facility documentation which is necessary to substantiate all information submitted in each report, including, but not limited to, the following:

- (a) documentation required by 40 CFR Part 372.10;
- (b) documentation supporting the toxics user's determination of the quantity of the toxic substance manufactured, processed, or otherwise used at the facility. If, in determining the quantity of the toxic substance manufactured, processed or otherwise used at the facility, the toxics user does not consider any or all of a toxic substance pursuant to 310 CMR 50.20, the toxics user shall maintain documentation necessary to support the exclusion;
- (c) documentation supporting the toxics user's determination of the quantity of the covered toxic generated as byproduct, prior to any handling, treatment, transfer, or release, by the facility;
- (d) documentation supporting the toxics user's determination of the quantity of the covered toxic shipped from the facility as or in product;

(e) documentation supporting the toxics user's determination of the amount of the covered toxic manufactured, processed, or otherwise used in each production unit at the facility;

(f) documentation supporting the toxics user's determination of the quantity of the covered toxic generated as byproduct by each production unit;

~~(g) documentation supporting the toxics user's determination of the byproduct reduction index for each production unit included in the report, including, without limitation, the following:~~

- ~~1. the actual calculation;~~
- ~~2. the amount of the toxic generated as byproduct by the production unit in both the reporting year and the base year, and the number of units of product produced by the production unit in both the reporting year and the base year;~~
- ~~3. documentation that describes and defines the unit of product;~~

~~(h) documentation supporting the toxics user's determination of the emission reduction index, including, without limitation, the following:~~

- ~~1. the actual calculation, and;~~
- ~~2. the amount of the toxic emitted by the production unit in both the reporting year and the base year, and the number of units of product produced by the production unit in both the reporting year and the base year;~~
- ~~3. documentation that describes and defines the unit of product;~~

(g) documentation supporting the toxics user's determination of the quantity of the covered toxic used to treat waste or control pollution;

(ih) for each production unit included in the report, documentation supporting and explaining the toxics user's designation of the production unit;

(i) documentation supporting the toxics user's determination of the number of units of product produced by each production unit and documentation that describes and defines the unit of product.

(j) for each production unit included in the report in which the use of a toxic substance or generation of byproduct increased or decreased by more than 10 percent from the previous reporting year the following documentation:

1. documentation supporting the toxics user's determination that implementation of a specific toxics use reduction technique, management technique, ~~or~~ combination of techniques, ~~or other factors~~ resulted in ~~an increase five points or more in the byproduct reduction index~~ a significant reduction change in toxics use or byproduct generation for a specific production operation;
2. an explanation and description of each toxics use reduction technique, management technique, ~~or~~ combination of techniques, ~~or other factors used to achieve that resulted in a significant reduction~~ the change in toxics use or byproduct generation ~~a five or more point increase in the byproduct reduction index~~, including a

description of how the toxics use reduction technique, management technique, or combination of techniques was used on the production operation.

(2) If a toxics user claims that the facility has less than 10 full-time employees and is exempt from the reporting requirements of 310 CMR 50.30 pursuant to 310 CMR 50.31(3), the toxics user shall maintain documentation at the facility supporting such claim.

(3) If a toxics user does not include in the toxics use report information associated with a pilot plant, a pilot production unit, or a start-up production unit pursuant to 310 CMR 50.32(12)(a)1., 2., or 3., the toxics user shall maintain documentation necessary to support the determination that the pilot plant, pilot production unit, or start-up production unit is excluded pursuant to 310 CMR 50.32(12)(a)1., 2. or 3. The toxics user shall also maintain documentation necessary to explain any discrepancy between the total quantity of the covered toxic manufactured, processed, or otherwise used by the facility as reported in the report and the aggregate quantity of the covered toxic manufactured, processed, or otherwise used by all production units for which information is included in the report attributable to the pilot plant, pilot production unit, or start-up production unit for which information is not included in the report.

(4) ~~The toxics user shall maintain at the facility a copy of each toxics use report, and supporting documentation, submitted for the reporting base year for as long as the facility operates.~~ The toxics user shall maintain at the facility a copy of each toxics use report, and supporting documentation, ~~submitted for years other than the reporting base year,~~ for a period of at least five years after the date that the report was due.

(5) All records and documentation established or maintained pursuant to 310 CMR 50.36~~(5)~~ shall be readily available for purposes of inspection and copying by the Department.